

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TERVES, LLC,)	CASE NO. 1: 19 CV 1611
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
)	
YUEYANG AEROSPACE)	
NEW MATERIALS CO. LTD., <i>et al.</i> ,)	
)	
Defendants.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Thomas M. Parker. The Report and Recommendation (Document # 72), issued on December 7, 2020, is ADOPTED by this Court. Approximately a year following the filing of its original Complaint, Plaintiff, Terves LLC (“Terves”) requested preliminary injunctions to enjoin the alleged infringement of U.S. Patent No. 10,329,653 (“the ‘653 Patent”). (ECF #30, 31, 47). As part of its prosecution of the preliminary injunction motions, Plaintiff moved for leave to file a rebuttal expert report and for an evidentiary hearing. (ECF #55, 68). Magistrate Judge Parker has recommended denying each of these motions. Terves filed objections to the Report and Recommendation (ECF # 76). The Court has reviewed *de novo* the Report and

Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation.

Terves contradicts the Magistrate's characterization of the communications between the Court and Terves with regard to its response to Defendants' invalidity defense. The record provides support for the Magistrate's characterization of the discussions relating to Terves challenge to the invalidity defense. The Court will, therefore, accept the Magistrate's recitation of facts and his ruling on the waiver issue in connection with the preliminary injunction proceedings. That ruling will be limited in application to the preliminary injunction proceedings, however, and may be re-visited, if appropriate, in so far as it may also apply to Terves' future prosecution of the main case.

Terves also challenges the Magistrate's findings on likelihood of success on the merits and potential for irreparable harm. Having accepted the Magistrate's interpretation of Terves' failure to provide a pre-hearing challenge to the invalidity defense, his findings on the likelihood of success are supported. Plaintiff bears a heavy burden when seeking a preliminary injunction. The Report and Recommendation properly and thoroughly sets forth and applies that standard and comes to the conclusion that Terves has not met its burden. The Court agrees. Terves has not provided sufficient evidence and argument at this juncture to show that it is likely to succeed on the merits, or to show that it will suffer irreparable harm if an injunction is not issued. For these reasons, the objections are overruled, and the Report and Recommendation are adopted as written. Plaintiff's motions for Preliminary Injunction are DENIED. (ECF #30, 31, 47).

The evidentiary rulings of the Magistrate are also adopted, and those motions are DENIED. (ECF #55, 68). However, they may be re-visited, if appropriate, as the case proceeds towards trial. A status conference is scheduled for January 13, 2021, at 9:30 a.m. by telephone.

IT IS SO ORDERED.

Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: December 30, 2020